



153427

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

Dayton X-Ray Site

APR 13 2001

REPLY TO THE ATTENTION OF

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mrs. Joan Ruth Sammons  
c/o James Cross, Esq.  
Alberry, Cross & Fogarty  
137 North Main Street, Suite 900  
Dayton, Ohio 45402

Re: Dayton X-Ray Site  
1150 West Second Street, Dayton, Ohio  
Site ID# B5R9

Dear Mr. Cross:

Enclosed Please find an executed copy of the Administrative Order by Consent issued for this Site pursuant to Sections 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9606 and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Jerome Kujawa, Assistant Regional Counsel, at (312) 886-6731 or Steven Renninger, On-Scene Coordinator, at (440) 250-1700.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Richard C. Karl".

William E. Muno, Director  
Superfund Division

Enclosure

cc: Cindy Haffner, Chief  
Division of Emergency & Remedial Response  
Ohio Environmental Protection Agency  
1800 WaterMark Drive  
Columbus, OH 43266-0149

The Respondent's participation in this Order shall not constitute an admission of liability or of U.S. EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. The Respondent agrees to comply with and be bound by the terms of this Order. The Respondent further agrees that she will not contest the basis or validity of

this Order or its terms.

## **II. PARTIES BOUND**

This Order applies to and is binding upon U.S. EPA, and upon the Respondent and Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership of the Site shall not alter Respondent's responsibilities under this Order. The Respondent is liable for carrying out all activities required by this Order.

The Respondent shall ensure that her contractors, subcontractors, and representatives comply with this Order. The Respondent shall be responsible for any noncompliance with this Order.

## **III. FINDINGS OF FACT**

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. The Dayton X-Ray Site consists of a 17,000-square-foot building on approximately two acres in Dayton, Montgomery County, Ohio. The geographical coordinates for the Site are latitude 39 degrees 45.45 minutes north and longitude 84 degrees 12.65 minutes west. The Site is bordered to the north by West Second Street, Mount Hebron Baptist Church and residences; to the east by residences; to the south by an alley and commercial buildings, and to the west by North Williams Street. Residential properties are located within 75' to the north and east of the Site buildings. The Site is located approximately 0.5 miles west of Interstate I-75 and approximately one mile from downtown Dayton. Located within a one mile radius of the Site are four school buildings. The nearest bodies of water are the Great Miami River, located approximately 0.25 miles east of the Site, and Wolf Creek, located approximately 700 feet north of the Site. The Dayton X-Ray Site sits atop and within a federally designated sole-source aquifer composed of highly transmissive sands and gravels.

2. The Dayton X-Ray Site is not fenced. There is unrestricted Site access to outdoor waste areas. As of September, 2000, there was unrestricted access to the front building garage door, which has been recently temporarily boarded. Additionally, the first floor ceiling of the site building has deteriorated and left an approximately 2' x 3' hole.

3. Based on information obtained from a company brochure, the Dayton X-Ray Company was founded by L. W. Sammons in 1939 and operated in Dayton and Cincinnati, Ohio. The Dayton X-Ray Company operated at 1150 West Second Street in Dayton, Ohio which included principal offices and laboratories. Dayton X-Ray offered testing

services for the aircraft industry, foundries and mills, the petroleum industry, machine shops, and steel manufacturers. The on-site laboratories included an X-ray laboratory, film processing, magnetic particle department, and gamma ray laboratory. The Dayton X-ray gamma ray laboratory utilized Cobalt 60, Iridium 192 and other radioactive isotopes. The Dayton X-Ray Company entered bankruptcy in 1992.

4. On June 7, 1994, the City of Dayton Fire Department inspected the Dayton X-Ray Site and issued the following violations to owner Joan Sammons: Abandoned underground tank, buildings not secured, and improper storage of corrosive liquids.

5. On May 12, 2000, the City of Dayton Fire Department inspected the Dayton X-Ray site and issued the following violations: building is not secure, building is surrounded by weeds, dumped material and abandoned chemical containers causing a fire threat, west exterior side contains multiple 55 gallon containers with liquid product, the building is abandoned, no permits exist for chemical storage. On May 15, 2000, the City of Dayton, Fire Prevention Bureau requested assistance from the Ohio Environmental Protection Agency ("OEPA") noting unsecured, open drums on the west exterior of the building and drums (full and empty) located within the structure.

6. Pursuant to a search warrant dated September 21, 2000, OEPA entered the Dayton X-Ray Site in order to inspect the property to ensure compliance with Ohio's hazardous waste laws. An OEPA inspector photographed site conditions and sampled numerous waste drums. OEPA drum sample results indicated drums contained corrosive, flammable and toxicity characteristic leaching procedure ("TCLP") lead waste. Drum sample X-18 documented contents to have a flashpoint of 75 degrees Fahrenheit ("°F"). OEPA also observed several vials containing elemental mercury.

7. On September 29, 2000, OEPA personnel verbally requested U.S. EPA assistance in evaluating the need for a time-critical removal action. In a letter dated November 6, 2000, the OEPA Manager of Emergency Response requested U.S. EPA assistance in conducting a time-critical removal action at the abandoned Dayton X-Ray Site.

8. On October 31, 2000, the U.S. EPA On-Scene Coordinator ("OSC") and the U.S. EPA Region 5 Superfund Technical Assistance and Response Team conducted a Site investigation at the Dayton X-Ray Site. The OSC observed unrestricted access to outdoor drum areas west of the Site building. Evidence of trespassing in and around the drum storage areas was documented. The front loading dock garage door was temporarily fastened with a board providing access to the drum and waste piles within the 17,000-square-foot building. Numerous outdoor building signs were labeled "Caution Radiation Area".

9. During the October 31, 2000, U.S. EPA Site investigation, the OSC observed approximately 75 drums and containers of waste in numerous areas inside and outside the building. Numerous drums were labeled as "corrosive", "flammable", "used transformer oil", "volatile solvent", "causes burns, combustible, harmful if inhaled", and "sodium hydroxide". Drums were noted to be in varying stages of deterioration, with contents spilled at several locations. Several metal drums were totally disintegrated with only the plastic liner containing waste. The OSC noted waste incompatibilities with acid drums in close proximity to bases (sodium hydroxide).

10. A total of ten waste samples were collected from drums and containers throughout the Site. Samples collected during the U.S. EPA Site investigation indicated the presence of ignitable, corrosive waste, and lead waste in drums and containers. Analysis for flash point (U.S. EPA method 1010) was conducted on drum samples D-4, D-5, D-9, and D-10. Total volatile organic chemical ("VOC") (U.S. EPA method SW846 8260) analysis was conducted on drum samples D-3, D-4, and D-9. pH tests (SW8 9040B) were conducted on drum samples D-1, D-2, D-3, D-7 and D-8. TCLP Resource Conservation and Recovery Act ("RCRA") metals analysis (U.S. EPA methods SW846 6020) was performed on drum sample D-6. Drum sample D-4 recorded a flash point of  $< 50^{\circ}\text{F}$ , which, according to 40 CFR Section 261.21, is considered a RCRA characteristic hazardous waste by virtue of ignitability. In addition, drum samples D-5 ( $120^{\circ}\text{F}$ ), and D-8 ( $140^{\circ}\text{F}$ ) showed flash points at or less than the regulatory limit of  $140^{\circ}\text{F}$ . The laboratory pH levels in drum samples D-1 (pH=1.0), D-2 (pH=14.0) and D-7 (pH=1.0) were greater than or less than the pH regulatory limits which according to 40 CFR 261.22 is considered a RCRA characteristic hazardous waste by virtue of corrosivity. Drum sample D-6 showed a TCLP lead concentration of 9.7 milligram per liter, which, according to 40 CFR Section 261.24, is considered a RCRA characteristic hazardous waste by virtue of toxicity for lead. Various concentrations of VOCs were detected. Most notable VOC results were the presence of trichloroethene at 1,600,000,000 micrograms per kilograms (" $\mu\text{g}/\text{kg}$ ") in drum sample D-9 and benzene at 300,000  $\mu\text{g}/\text{kg}$  in drum sample D-3.

#### IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA has determined that:

1. The Dayton X-Ray Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
2. Ignitable and corrosive waste streams, trichloroethene, benzene, sodium hydroxide, mercury, and lead are "hazardous

substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

3. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
4. The Respondent Joan Ruth Sammons is the present "owner" and "operator" of the Dayton X-Ray Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20). The Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§9601(8) and (22).
6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR §300.415(b)(2). These factors include, but are not limited to, the following:

a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants. This factor is present at the Site due to the Site's location of approximately 0.5 miles west of Interstate I-75 and one mile from downtown Dayton. Located within a one mile radius of the site are four school buildings. The Site is bordered to the north by West Second Street, Mount Hebron Baptist Church and residences; to the east by residences; to the south by an alley and commercial buildings; to the west by North Williams Street. Residential properties are located within 75' to the north and east of the Site buildings.

On October 31, 2000, the OSC observed unrestricted Site access to an outdoor drum area. Evidence of trespassing in and around the outdoor drum storage areas was documented. The loading dock garage door was open providing access to the drum and waste piles within the 17,000-square-foot building.

During the October 31, 2000, U.S. EPA Site investigation, the OSC identified surficial drums containing hazardous substances in various stages of deterioration with spilled contents. The hazardous substances, classified by 40 CFR 302.4, identified in deteriorated drums with unrestricted Site access included ignitable and corrosive wastes, trichloroethene, benzene, sodium hydroxide, and lead waste streams. Exposure pathways include direct contact with drums, and inhalation.

b. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release. This factor is present at the Site due to the existence of approximately 75 drums of waste observed by the OSC during the October 31, 2000, U.S. EPA Site investigation in numerous areas inside and outside the 17,000-square-foot building. Numerous drums were labeled as "corrosive", "flammable", "used transformer oil", "volatile solvent", "causes burns, combustible, harmful if inhaled", and "sodium hydroxide". Drums were noted to be in varying stages of deterioration, with contents spilled at several locations both inside and outside the building. A total of ten waste samples were collected from drums and containers throughout the Site. Drum samples documented characteristic ignitable and corrosive wastes (pH=14 and pH1), and flashpoints <50°F.

c. Threat of fire or explosion. This factor is present at the Site due to the existence of the number of flammable waste streams in drums and containers at the Site. During the October 31, 2000, U.S. EPA Site investigation, the OSC observed approximately 75 drums and containers of waste in numerous areas inside and outside the 17,000-square-foot building. Numerous drums were labeled as "corrosive", "flammable", "used transformer oil", "volatile solvent", "causes burns, combustible, harmful if inhaled", "sodium hydroxide". Drums were noted to be in varying stages of deterioration, with contents spilled at several locations. Sample results indicated drum and container waste streams with flashpoints of <50°F (ignitability characteristic). A fire or explosion created from unstable flammable chemicals would cause migration of hazardous substances over the adjacent residential area and endanger emergency personnel responding to a fire or explosion.

d. The unavailability of other appropriate federal or state response mechanisms to respond to the release. This factor supports the actions required by this Order at the Site because on May 15, 2000, the City of Dayton, Fire Prevention Bureau requested assistance from the OEPA noting unsecured, open drums on the west exterior of the building and drums (full and empty) located within the structure.

On September 21, 2000, the OEPA conducted a Site investigation and discovered corrosive and flammable waste streams at the abandoned Site in drums and containers.

In a letter dated November 6, 2000, the OEPA Manager of Emergency Response requested U.S. EPA assistance in conducting a time-critical removal action at the abandoned Dayton X-Ray Site.

The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

The removal actions required by this Order, if properly performed under the terms of this Order, are consistent with the NCP. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment.

#### V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that the Respondent shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

The Respondent shall perform the removal actions required by this Order herself or retain a contractor to implement the removal actions. The Respondent shall notify U.S. EPA of the Respondent's qualifications or the name and qualifications of such contractor, whichever is applicable, within 5 business days of the effective date of this Order. The Respondent has chosen Perma-Fix Environmental Services, Inc. of Dayton, Ohio as its contractor, and this contractor has been approved by U.S. EPA. The Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, the Respondent shall retain a different contractor within 2 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

Within 5 business days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. The Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. The Respondent has chosen Jack Jaspers of Perma-Fix Environmental Services, Inc., Dayton, Ohio, as its Project Coordinator. This Project Coordinator has been approved by U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work.



U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent, if Respondent changes the Project Coordinator. If U.S. EPA disapproves a selected Project Coordinator, the Respondent shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by the Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by the Respondent.

The U.S. EPA has designated Steven Renninger of the Emergency Response Branch, Region 5, as its OSC. The Respondent shall direct all submissions required by this Order to the OSC at 26 West Martin Luther King Drive, B-2, Cincinnati, Ohio, 45268, by certified or express mail. The Respondent shall also send a copy of all submissions to Jerome Kujawa, Assistant Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. The Respondent is encouraged to make her submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

U.S. EPA and the Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and the Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

## 2. Work to Be Performed

The Respondent shall perform, at a minimum, the following removal actions:

1. Develop and implement a Site Work Plan;
2. Develop and implement a Site Health and Safety plan, including an air monitoring plan and Site contingency plan;
3. Develop and implement a Site security plan;
4. Characterize, remove, and properly dispose of hazardous substances and wastes (uncontainerized waste, surface drums, underground storage tank contents, and small containers) and associated heavily-contaminated soils located at the Site in accordance with U.S. EPA's Off-Site Rule (40 CFR § 300.440);
5. If necessary, decontaminate Site building floors following removal of waste drums and piles; and
6. If necessary, backfill excavated areas, if any, with clean

material and topsoil.

## 2.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, the Respondent shall submit a revised draft Work Plan within 7 business days of receipt of U.S. EPA's notification of required revisions. The Respondent shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. The Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan. The Respondent shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

## 2.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondent shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. The Respondent shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

## 2.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. The Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance.

Upon request by U.S. EPA, the Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. The Respondent shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or

analysis. The Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, the Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by the Respondent or her contractors or agents while performing work under this Order. The Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

#### 2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by the OSC, the Respondent shall submit a proposal for post-removal site control, consistent with Section 300.415(1) of the NCP, 40 CFR §300.415(1), and OSWER Directive 9360.2-02. Upon U.S. EPA approval, the Respondent shall implement such controls and shall provide U.S. EPA with documentation of all post-removal site control arrangements.

#### 2.5 Reporting

The Respondent shall submit a monthly written progress report to U.S. EPA concerning actions undertaken pursuant to this Order, beginning 30 calendar days after the date of U.S. EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and to OEPA. The notice to U.S. EPA and to OEPA shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.3 (Access to Property and Information).

#### 2.6 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set

forth in Section 300.165 of the NCP, 40 CFR §300.165. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

### 3. Access to Property and Information

The Respondent shall provide or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Ohio representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which U.S. EPA determines to be necessary. The Respondent shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by the Respondent or her contractor, or on the Respondent's behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than the Respondent, the Respondent shall use her best efforts to obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. The Respondent shall immediately notify U.S. EPA if, after using her best efforts, she is unable to obtain such agreements. The Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist the Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. The Respondent shall reimburse U.S. EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

### 4. Record Retention, Documentation, Availability of Information

The Respondent shall preserve all documents and information, in her possession or the possession of its contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, the Respondent shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, the Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. Any information that the Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

#### 5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR §300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

#### 6. Compliance With Other Laws

The Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. §9621(e), and 40 CFR §300.415(j). In accordance with 40 CFR §300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

#### 7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. The Respondent shall also immediately notify the OSC or, in the event of his unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions. If the Respondent fails to respond, U.S. EPA may respond to the release or endangerment and reserve the right to recover costs

associated with that response.

The Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The Respondent shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004.

#### **VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR**

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or the Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

#### **VII. REIMBURSEMENT OF COSTS**

The Respondent shall pay all oversight costs of the United States related to the Site that are not inconsistent with the NCP. U.S. EPA will send the Respondent a bill for "oversight costs" on an annual basis. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Administrative Order by Consent ("AOC") from the effective date of the AOC.

The Respondent shall, within 30 calendar days of receipt of a bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Program Accounting & Analysis Section  
P.C. Box 70753  
Chicago, Illinois 60673

The Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590, and also to Jerome Kujawa, U.S. EPA Region 5, Office of Regional Counsel, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Dayton X-Ray Site" and shall

reference the payer's name and address, the U.S. EPA Site identification number (#B5R9), and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, the Respondent shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. §9607(a). The interest shall begin to accrue on the date of the Respondent's receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of the Respondent's failure to make timely payments under this Section.

The Respondent may dispute all or part of a bill for Oversight costs submitted under this Order, if the Respondent alleges that U.S. EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, the Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, the Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. The Respondent shall simultaneously transmit a copy of both checks to the OSC. The Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

#### **VIII. DISPUTE RESOLUTION**

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondent objects to any U.S. EPA action taken pursuant to this Order, including billings for response costs, the Respondent shall notify U.S. EPA in writing of her objection within 10 calendar days of such action, unless the objection has been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting the Respondent's position, and all supporting documentation on which such party relies. U.S. EPA shall submit its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written

documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA.

An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order.

The Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, the Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

#### IX. FORCE MAJEURE

The Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of the Respondent or of any entity controlled by the Respondent, including but not limited to her contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite the Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

The Respondent shall notify U.S. EPA orally within 24 hours after the Respondent becomes aware of any event that the Respondent contends constitutes a force majeure, and in writing within 7 calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. The Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for U.S. EPA to deny the Respondent an extension of time for performance. The Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were



exercised to avoid and mitigate the effects of the delay.

If U.S. EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by U.S. EPA. Such an extension shall not alter the Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

#### **X. STIPULATED AND STATUTORY PENALTIES**

For each day, or portion thereof, that the Respondent fails to fully perform any requirement of this Order in accordance with the schedule established pursuant to this Order, the Respondent shall be liable as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Non-Compliance</u>
\$250	Each day up to 30 days
\$500	Each day from 31 to 60 days
\$1,000	Each day over 61 days

Upon receipt of written demand by U.S. EPA, the Respondent shall make payment to U.S. EPA within 20 days and interest shall accrue on late payments in accordance with Section VII of this Order (Reimbursement of Costs).

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether U.S. EPA has notified the Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way the Respondent's obligation to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If the Respondent prevails upon resolution, the Respondent shall pay only such penalties as the resolution requires. In its unreviewable discretion, U.S. EPA may waive its rights to demand all or a portion of the stipulated penalties due under this Section. Such a waiver must be made in writing.

Violation of any provision of this Order may subject the Respondent to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in Section

106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). The Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should the Respondent violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

#### **XI. RESERVATION OF RIGHTS**

Except as specifically provided in this Order, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

#### **XII. OTHER CLAIMS**

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of the Respondent. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or her directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Except as specifically provided in this Order each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

Except as expressly provided in Section XIII (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2). The Respondent

waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order. No action or decision by U.S. EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

### **XIII. COVENANT NOT TO SUE**

Except as otherwise specifically provided in this Order, upon issuance of the U.S. EPA notice referred to in Section XVII (Notice of Completion), U.S. EPA covenants not to sue the Respondent for judicial imposition of damages or civil penalties or to take administrative action against the Respondent for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration and upon the Respondent's payment of the response costs specified in Section VII of this Order, U.S. EPA covenants not to sue or to take administrative action against the Respondent under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for recovery of oversight costs incurred by the United States in connection with this removal action and this Order. This covenant not to sue shall take effect upon the receipt by U.S. EPA of the payments required by Section VII (Reimbursement of Costs).

These covenants not to sue are conditioned upon the complete and satisfactory performance by the Respondent of her obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

### **XIV. CONTRIBUTION PROTECTION**

With regard to claims for contribution against the Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§9613(f)(2) and 9622(h)(4).

Nothing in this Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

### **XV. INDEMNIFICATION**

The Respondent agrees to indemnify, save and hold harmless the

United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of the Respondent and Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Respondent, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by the Respondent for any claim or cause of action against the United States based on negligent action taken solely and directly by U.S. EPA (not including oversight or approval of plans or activities of the Respondent).

#### **XVI. MODIFICATIONS**

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

If the Respondent seeks permission to deviate from any approved plan or schedule, the Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

#### **XVII. NOTICE OF COMPLETION**

When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), U.S. EPA will provide written notice to the Respondent. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondent,

provide a list of the deficiencies, and require that the Respondent modify the Work Plan if appropriate to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

#### **XVIII. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order or finds that the Respondent has sufficient cause not to comply with one or more provisions of this Order, the Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

#### **XIX. EFFECTIVE DATE**

This Order shall be effective upon receipt by the Respondent of a copy of this Order signed by the Director, Superfund Division, U.S. EPA Region 5.

IN THE MATTER OF:

Dayton X-Ray Site  
Dayton, Ohio

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 19th day of March, 2001.

By Joan Ruth Sammons  
Joan Ruth Sammons

IT IS SO ORDERED AND AGREED

BY:

Richard C Karl for  
William E. Muno, Director  
Superfund Division  
United States Environmental Protection Agency  
Region 5

DATE:

4-6-01

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To: D. Regel (SE-SJ)

Postage	\$ 1.18
Certified Fee	1.30
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 2.48

NAME Mrs. Jan Ruth Sammons  
 STREET c/o James Cross, Esq.  
 CITY, S Alberty, Cross & Fogarty  
 137 North Main Street, Suite 9000  
 Dayton Ohio 45402

**EMERGENCY SUPPORT SECTION**

7099 3400 0000 9596 2788

CHICAGO IL LOOP 61A

APR 11 1994

USPO

Instructions

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- ☐ Addressee's Address
- ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Mrs. Jan Ruth Sammons  
 c/o James Cross, Esq.  
 Alberty, Cross & Fogarty  
 137 North Main Street, Suite 9000  
 Dayton Ohio 45402

4a. Article Number  
 7099 3400 0000 9596 2788

4b. Service Type

<input type="checkbox"/> Registered	<input type="checkbox"/> Certified
<input type="checkbox"/> Express Mail	<input type="checkbox"/> Insured
<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> COD

7. Date of Delivery  
 4-12-01

5. Received By: (Print Name)  
 Sarah Chapman

6. Signature: (Addressee or Agent)  
 X Sarah Chapman

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.